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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 AMCO INSURANCE COMPANY,

13 Plaintiff,

14 v.

15 EUREKA OXYGEN COMPANY,

16 Defendant.

Case No. 10-cv-01257 NC

**ORDER GRANTING ELLEBRECHT'S
MOTION TO EXCLUDE REFERENCES
TO "COOKING EQUIPMENT"**

Re: Dkt. No. 102

Jury Trial: May 7, 2012

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18 Janice Ellebrecht moves to exclude from trial any references to her alleged failure to
19 properly inspect and maintain her cooking equipment, because such a claim of negligence is
20 vague and overly broad based on the third-party complaint that Eureka brings against her. Eureka
21 opposes the motion, arguing that evidence of Ellebrecht's failure to maintain her cooking
22 equipment is relevant and probative of the claims at issue, and that Ellebrecht provides no legal
23 authority in support of her motion. Because the only cooking equipment at issue in this case is
24 the deep fat fryer and the fire-suppression system on the fryer, Ellebrecht's motion is GRANTED.

25 Ellebrecht notes that Eureka's third-party complaint against her states that she was
26 negligent because she allegedly failed to turn off the deep fat fryer in her restaurant before she left
27 for the night. Ellebrecht's Mot. at 2, Dkt. No. 102. Ellebrecht argues that Eureka improperly
28 contended in the parties' joint pretrial statement that Ellebrecht failed to properly maintain her

1 “restaurant cooking equipment,” because until the date on which the pretrial statement was filed,
2 no party had suggested that Eureka’s negligence claims against Ellebrecht concerned any cooking
3 equipment other than the deep fat fryer. *Id.* at 2. Ellebrecht adds that none of the experts in the
4 case discussed the maintenance or inspection of Ellebrecht’s cooking equipment generally. *Id.* at
5 3.

6 Eureka responds that its claims of negligence against Ellebrecht have been both “specific
7 and broad,” and that it has always claimed that Ellebrecht caused the fire. Eureka’s Resp. at 3,
8 Dkt. No. 107. Eureka argues that none of the experts in the case have testified that “there was no
9 evidence of problems with the cooking equipment itself,” and that Ellebrecht and her experts put
10 cooking equipment at issue by testifying about a possible gas leak and various components of the
11 deep fat fryer. *Id.* at 3-6. Finally, Eureka argues that it would be prejudiced if references to
12 Ellebrecht’s inspection and maintenance of her cooking equipment are excluded from trial, as
13 such references are relevant to and probative of the ultimate issues in the case. *Id.* at 6.

14 The Court finds that, based on the operative pleadings, the only cooking equipment at
15 issue in this case is the deep fat fryer and the fire-suppression system on the fryer. In Eureka’s
16 third-party complaint against Ellebrecht, Eureka alleges that Ellebrecht was negligent with
17 respect to the deep fat fryer. *See* Dkt. No. 6 ¶ 6. Although Eureka incorporates by reference in its
18 third-party complaint AMCO’s allegations of negligence against Eureka, these allegations are
19 limited to the deep fat fryer and the fire-suppression system on the fryer. *See* Dkt. No. 1 ¶¶ 7-9.
20 Because Eureka has not established that cooking equipment other than the fryer or the fire-
21 suppression system on the fryer has ever been at issue, any references to “cooking equipment”
22 generally will be excluded from trial under Federal Rule of Evidence 403, as such references are
23 very likely to mislead the jury or waste time.

24 IT IS SO ORDERED.

25 Date: May 4, 2012



Nathanael M. Cousins
United States Magistrate Judge